2011080814201000l

महाराष्ट्र शासन

क्रमांकः पीएमसी ३०११/३४५/प्र.क्र.१२६/नवि-२२
नगर विकास विभाग,
मंत्रालय, मुंबई ४०० ०३२.
दिनांकः ८ ऑगस्ट २०११

प्रति,
आयुक्त,
पुणे शहर महानगरपालिका,
पुणे

विषयः- **पुणे महानगरपालिका**
श्री.सुभाष बा.जगताप,ज्यु.ग्रेड (निवृत्त) यांचे निलबन व बडतर्फ कालावधीतील वेतनाबाबत व महासभा ठराव क्र.१३,दि.२४.४.२००७ विखंडीत करण्याबाबत

संदर्भ :- (१) आपले पत्र क्र. अति.मआ/उपआ/से/३७६७, दि.१५.१२.२०१०
(२) आपले पत्र क्र. अति.मआ/उपआ/से/४८४७, दि.५.३.२०११
(३) आपले पत्र क्र. से/३१०, दि.२१.४.२०११

महोदय,

आपले उपरोक्त विषयाबाबतची संदर्भाधिन पत्रे कृपया पहावीत.

०२. सदर पत्रान्वये प्रस्तावित विषयाबाबत शासनाचे विधी व न्याय विभागाचे अभिप्राय घेण्यात आले आहेत. सदर प्रकरणीचा सर्व तपशिल विचारात घेवून विधी व न्याय विभागाचे अभिप्राय घेण्यात आले असून सदर अभिप्रायाची प्रत सोबत जोडली आहे.

०३. सदर विधी व न्याय विभागाचे अभिप्राय पाहता, या प्रकरणी मुंबई प्रांतिक महानगरपालिका अधिनियम १९४९ चे कलम ४५१ अन्वये शासनाने हस्तक्षेप करण्याची गरज नाही, असे आपणांस कळविण्याचे मला निदेश आहेत.

आपला,

[सुनील कोठेकर]
कक्ष अधिकारी महाराष्ट्र शासन

प्रत :-
(१) उपायुक्त (सेवक वर्ग) पुणे महानगरपालिका,पुणे
(२) कक्ष अधिकारी (संगणक शाखा) नगर विकास विभाग,मंत्रालय,मुंबई
(३) निवडनस्ती (नवि-२२)

e1 ?

Law & Judiciary Department/E

The Urban Development Department by its note dated 26.2.2011 has stated that considering the order dated 20.9.2010 passed by the Industrial Court, Pune in Complaint (ULP) No.258/2006 whether it will be proper for the State Government to pass order under section 451 of the Bombay Provincial Municipal Corporation Act suspending / rescinding the resolution dated 24.4.2007 passed by the Pune Municipal Corporation.

On perusal of the papers, it appears that, Pune Municipal Administration had dismissed one Shri S.B. Jagtap vide its order dated 25.6.2004 after finding guilty in departmental enquiry for misappropriation of tax money. It appears, on the same charges he was prosecuted and CJM, Pune acquitted him in the criminal trial by its order dated 30.6.2006. If we further peruse the papers, then it appears that the Standing Committee by its resolution dated 13.3.2007, after considering the acquittal dated 30.6.2006 passed by the CJM, Pune, resolved that the punishment of the termination of the service by order dated 25.5.2004 of the complainant is cancelled and the complainant Shri Jagtap is reinstated in service and his suspension period is treated as duty period and granted all consequential benefits. It further appears that the Pune Municipal Corporation by its General Body Resolution No.13 dated 24.4.2007 has confirmed the resolution of the Standing Committee dated 13.3.2007. It appears, when despite the resolutions of the Standing Committee and General Body of Municipal Corporation, Pune, Municipal Administration refused to reinstate Shri Jagtap, he approached to Industrial Court by way of Complaint (ULP) No.258 / 2006. It appears, the Industrial Court after relying on the acquittal order passed by the CJM, Pune and also resolutions passed by the Standing Committee and General Body of Municipal Corporation dated 13.3.2007 & 24.4.2007 respectively, come to the conclusion that the Municipal Corporation has committed unfair labour practice under Item 9 of Schedule IV of the MRTP & PULP Act,1971. Thus, Industrial Court directed to cease and desist from the unfair labour practice to take affirmative action by granting all the consequential benefits to the complainant as per the decision taken by the Standing Committee and General Body Meeting dated 24.4.2007 within 60 days from the date of this order.

It appears, against this order of Industrial Court, Municipal Corporation has filed writ petition bearing No.9849 of 2010 before the Hon'ble Bombay High Court and the said writ petition is pending. Department has not clarified whether Hon'ble High Court has passed any order on the said petition.

It appears, now considering the provisions contained under section 451 of the BPMC Act, the advocate of the Municipal Corporation has advised to the Municipal Commissioner for approaching State Government u/s 451 and to get the resolution dated 24.4.2007 passed by the General Body of Municipal Corporation, Pune rescinded. In these circumstances, the Urban Development Department has raised the above stated question.

In this respect, the action u/s 451 of the BPMC Act will not be proper and advisable for the following reasons :-

(a) The Municipal Corporation has passed said resolution on 24.4.2007. The Municipal Commissioner, it appears, has moved a proposal to the State Government by his letter dated 15.12.2010. It appears, there is delay of more than three & half years for moving the proposal to the Government on the part of Commissioner. Hon'ble Supreme Court in Mohd. Kavi Mohd. Amin V/s Fatimabai Ibrahim (AIR 1997) 6 SCC 71 has held that, *"where no time limit is prescribed for the exercise of the power under a statute, it does not mean that it can be exercised at any time; such power has to be exercised within a reasonable time."* It is felt that in the present case, for taking action u/s 451 of the BPMC Act, it cannot be stated that the said action is within reasonable time.

(b) In the present case, after relying the resolutions passed by the Standing Committee and General Body of Municipal Corporation dated 13.3.2007 & 24.4.2007, Industrial Court has recorded its finding and passed order. Now, if the resolutions passed by the General Body of Municipal Corporation, Pune are rescinded by taking recourse to the provisions of section 451 of the BPMC Act, as observed by the Hon'ble High Court Bench at Nagpur in writ petition No.1581 of 2010, it is likely to interfere with the judicial process. In the said order, Hon'ble High Court observed that, *"the executive discipline requires that the executive should not try to override orders passed by the competent judicial courts or tribunals. Such defiant attitude on the part of the executives will not be tolerated by this court."* It appears, considering the observations of the Hon'ble High Court, the Chief Secretary, State of Maharashtra has issued a circular bearing No. MCO-1210/C.R.126/10/UDD-14 dated 27.4.2011 directing therein to take cognizance of directions of Hon'ble High Court.

(c) Considering the position stated at Para (b) above and the fact that writ petition is pending before the High Court by rescinding the resolutions passed by the Municipal Corporation, the effect of the judgment of the Industrial Court will not be set aside by the said resolution until & unless Hon'ble High Court set asides the Industrial Court's judgment. Therefore, Hon'ble High Court may not be inclined to interfere in

the order of Industrial Court on such new ground. Then such action u/s 451 of the BPMC Act will be proved as futile.

(d) As Industrial Court has passed judgment order on the basis of the resolutions, when those resolutions were in force, the Industrial Court's order may not be stated as arbitrary or erroneous. It is also felt that now at this belated stage, Hon'ble High Court may not allow to rely on the order passed u/s 451 of the BPMC Act by the State Government.

Considering the pending writ petition before the Hon'ble High Court, it is advisable that if Commissioner, Municipal Corporation, Pune and State Government desire to pass an order u/s 451 of the BPMC Act, then for that purpose leave of the Hon'ble High Court is obtained.

Principal Secretary & R.L.A. has seen and approved the above view.

(S.R.Shinde)
Asstt.Solicitor-cum-Deputy Secretary

U.O.R. to Urban Development Department/ *UD-22*

No. 488/E, dated 13th July, 2011.